

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)	Examiner: Ramsey Refai
Blair, et al.)	
)	Art Unit: 3627
Serial No.: 09/992,666)	
)	
Filed: November 19, 2001)	Confirmation No.: 8495
)	
For: METHOD AND SYSTEM FOR)	
GATHERING DATA USING AUTOMATIC)	
APPLIANCE FAILOVER)	
)	
Date of Final Office Action:)	Attorney Docket No.:
February 19, 2009)	10013014-1
)	
Notice of Appeal Filed:)	
April 30, 2009)	

June 30, 2009

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Appeal Brief is timely provided to support the Notice of Appeal filed
April 30, 2009.

1. Real Party in Interest:

The real party in interest is Hewlett-Packard Development Company, LP, a limited partnership established under the laws of the State of Texas and having a principal place of business at 20555 S.H. 249 Houston, TX 77070, U.S.A. (hereinafter "HPDC"). HPDC is a Texas limited partnership and is a wholly-owned affiliate of Hewlett-Packard Company, a Delaware Corporation, headquartered in Palo Alto, CA. The general or managing partner of HPDC is HPQ Holdings, LLC.

2. Related Appeals and Interferences

There are no other prior and/or pending appeals, interferences, or judicial proceedings that are related to, directly affect, or that will be directly affected by or have a bearing on the Board's decision.

3. Status of Claims

Claims 1-11 and 20-23 are pending in the application.

Claims 1-5 and 20-23 stand rejected.

Claims 12-19 were canceled.

No claims were allowed.

Claims 6-11 were withdrawn.

The rejections of claims 1-5 and 20-23 are appealed.

4. Status of Amendments

No Amendments were filed subsequent to the Final Office Action.

5. Summary of Claimed Subject Matter

Independent Claim 1

Claim 1 is directed to a method for configuring data communication paths between a central controller and a plurality of printing devices via a plurality of appliances. (See, specification, Figure 2). Claim 1 recites ensuring one or more appliances of the plurality of appliances are active where an appliance is a computer remote from the central controller configured to collect diagnostic data from one or more of the plurality of printing devices and to transmit the diagnostic data to the central controller. (See, specification, paragraphs [0024], [0027], [0028] and [0035]).

Claim 1 further recites, for each of the printing devices, determining communication capabilities with the one or more appliances to determine communication paths between the plurality of printing devices and the one or more appliances. (See, specification, paragraphs [0028] and [0029]). Claim 1 also recites transmitting signals indicative of the communication capabilities to the central controller. (See, specification, paragraph [0030]). Finally, claim 1 recites mapping respective communication paths between the central controller and the printing devices via the one or more appliances as a function of the communication capabilities to obtain an automatic appliance failover to allow diagnostic data to be collected from a selected printing device by way of multiple appliances. (See, specification, paragraphs [0030], [0032] and Figure 2, block 106).

Independent Claim 20

Claim 20 is directed to a system comprising a plurality of printing devices (Figure 1, reference designator (34)) and a plurality of appliances where an appliance is a computer configured to collect diagnostic data from one or more of the plurality of printing devices (Figure 1, reference designator (30)). (See, specification paragraph [0025]). Claim 20 further recites a communication network

configured to provide a plurality of communication paths between components connected to the communication network. (See, Figure 1, reference designator (36) and specification, paragraph [0025]).

Claim 20 also recites the plurality of printing devices and the plurality of appliances being connected to the communication network where communication paths are provided between one or more of the plurality of printing devices and one or more of the plurality of appliances. (See, specification, paragraph [0025]). Claim 20 further recites a controller remote from the appliances configured to communicate with the plurality of appliances and being configured to generate a map of the communication paths between the printing devices and the appliances based on signals received from the plurality of appliances. (See, Figure 1, reference designator (14) and specification, paragraph [0029]).

Claim 20 recites the controller being configured to receive, from a first appliance from the plurality of appliances, diagnostic data relating to a selected printing device. (See, specification paragraphs [0034] and [0035]). Finally, claim 20 recites the controller being configured to perform an automatic appliance failover to a second appliance using the map of the communication paths if the first appliance is disabled in order to receive the diagnostic data relating to the selected printing device. (See, specification paragraphs [0034] and [0035]).

6. Grounds of Rejection to be Reviewed on Appeal

I. Whether claims 1, 4, and 5 are unpatentable under 35 U.S.C. §103(a) as being obvious over the alleged AAPA (Applicant Admitted Prior Art, referencing US Pub. 2003/0097469).

II. Whether claims 20-23 are unpatentable under 35 U.S.C. 103(a) as being obvious over the alleged AAPA in view of “Official Notice”.

III. Whether claims 2 and 3 are unpatentable under 35 U.S.C. 103(a) as being obvious over the alleged AAPA in view of Basso et al. (US Patent No. 6,370,119).

7. Argument

I. Whether claims 1, 4, and 5 are unpatentable under 35 U.S.C. §103(a) as being obvious over the alleged AAPA (Applicant Admitted Prior Art, referencing US Pub. 2003/0097469).

Appellant notes that U.S. Published Application 2003/009469 is the published document of the present application.

To establish a prima facie case of 35 U.S.C. §103 obviousness, basic criteria must be met. The prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP 2143.(A) Section 2131 of the MPEP recites how "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). This same standard applies to 103 rejections as evidenced by Section 2143(A) of the MPEP, which reads: "The rationale to support a conclusion that the claim would have been obvious is that **all the claimed elements** were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions".

Independent Claim 1

Claim 1 is directed to a method for configuring data communication paths and recites:

for each of the printing devices, determining communication capabilities with the one or more appliances to determine communication paths between the plurality of printing devices and the one or more appliances;

The Final Office Action (hereinafter “FOA”) cites paragraph [0004] of the present specification as allegedly teaching the claimed element of “determining communication capabilities.” (FOA, page 9, 3rd paragraph). Applicant respectfully submits that paragraph [0004] discusses data collection devices. In particular, the text discusses that “each data collection device monitors itself” and that other devices are monitored by the data collection devices. Thus, there is no teaching or suggestion of, “for each of the printing devices, determining communication capabilities with the one or more appliances” or “to determine communication paths between the plurality of printing devices and the one or more appliances” as recited.

Since these two elements are not found, a prima facie obviousness rejection has not been established. The rejection is improper and should be reversed.

Claim 1 further recites:

transmitting signals indicative of the communication capabilities to the central controller; and

mapping respective communication paths between the central controller and the printing devices via the one or more appliances as a function of the communication capabilities to obtain an automatic appliance failover to allow diagnostic data to be collected from a selected printing device by way of multiple appliances.

The FOA cites paragraph [0003] as teaching the “transmitting” element and cites [0004] as teaching the “mapping” element (FOA, page 9). Applicant notes that the claimed “mapping” is performed “as a function of the communication capabilities,” which are from the signals transmitted to the central controller in the “transmitting” element. There is a claimed dependency between the elements.

Quite differently, paragraph [0003] teaches an operator manually performs a mapping process for devices based on assumptions such as the device addresses (see [0003]). “The mapping is transmitted to the central controller.” ([0003], line 6). Therefore, signals indicative of the communication capabilities are not transmitted to a central controller, but rather a “mapping” is transmitted from the human operator. Thus the claimed element is not found. Furthermore, there is no teaching or suggestion of what the “mapping” includes, what form it has, or what exactly is transmitted. Paragraph [0003] only discloses that the mapping is based on addresses. Only speculation and hindsight are thus used in the office action to elaborate on paragraph [0003] rather than actual teachings based in fact.

Additionally since [0003] only states that a human operator creates a map based on device addresses, it fails to teach or suggest a mapping operation that is performed “as a function of the communication capabilities” as recited in claim 1. Thus this function is not found. Further, the claimed mapping operation is performed from the transmitted signals in the preceding claimed element. Therefore [0003] fails to teach or suggest these elements or the claimed dependency of elements. Each and every element is not found and paragraphs [0003-0004] fail to teach or suggest claim 1.

Paragraph [0004] appears to have been cited as teaching the claimed function of “to obtain an automatic appliance failover to allow diagnostic data to be collected from a selected printing device by way of multiple appliances.” (FOA, page 9, 5th paragraph). However, paragraph [0004] explicitly states “each of the devices is associated with one of the data collection devices.” ([0004] lines 4-5) (Emphasis added). However, claim 1 recites “to allow diagnostic data to be collected from a selected printing device by way of multiple appliances.” The claim recites a communication path mapping of at least one-to-multiple appliances for each printing device whereas paragraph [0004] only discloses a one-to-one association between a device and a data collection device. Therefore, the claimed

mapping element is not found and the claimed function of allowing diagnostic data to be collected by way of multiple appliances is not found. This is a clear error.

The FOA misinterprets what is described in the Background of the present specification. The claimed elements are not found. Furthermore based on the explanation above, the examiner has changed the functions of the devices discussed in the Background in order to meet the claimed elements. This is improper and a clear error under MPEP 2143, section A: "The rationale to support a conclusion that the claim would have been obvious is that all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination yielded nothing more than predictable results to one of ordinary skill in the art." *KSR*, 550 U.S. at ____, 82 USPQ2d at 1395 (Emphasis added).

For a proper obviousness rejection, each and every element must be found. Here, numerous elements are not found. A prima facie obvious rejection has not been established and the rejection should be reversed. Accordingly, independent claim 1 and dependent claims 2-5 patentably distinguish over the references of record and should now be allowed.

Claim "As A Whole" is not Obvious

The MPEP requires that the claim "as a whole" be obvious for a proper rejection:

In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.

(MPEP 2141.02, section I, 1st paragraph) (Emphasis in original)

In the present case, the rejection is based on alleged individual differences. The rationale of the rejection is also based on the alleged differences themselves being obvious (see FOA). The rejection is therefore improper because the claim “as a whole” has not been shown to be obvious. Furthermore, the reasoning of the rejection is based on hindsight since it uses the present disclosure as a blueprint to reconstruct the claims. This is a clear error. No other references are presented to support the obviousness rejection. The rejection is improper for this additional reason.

Impermissible Official Notice

The FOA takes Official Notice that the claimed element of “ensuring one or more appliances of the plurality of appliances are active” is obvious (FOA, page 9, last paragraph). The MPEP describes when official notice is permissible:

Official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. While "official notice" may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the court in *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)).

(MPEP 2144.03, section A, 1st paragraph) (Emphasis added)

The Official Notice is improper and impermissible in the present case. Providing a function of ensuring that appliances are active is not capable of instant and unquestionable demonstration as being well-known. Such a function is also not common “as to defy dispute”. As clearly explained in paragraph [0003] of the specification, a human operator manually determines a map based on addresses

of the devices. Thus a map can be obtained without ensuring that a device is active. Accordingly, the examiner's conclusion that such a function is obvious to "allow the mapping of devices to be properly obtained" contradicts paragraph [0003]. Thus the examiner's position is disputable and is not capable of instant and unquestionable demonstration as being well-known. The Official Notice is impermissible.

Furthermore, the only teaching of the claimed function comes from the present specification. No other references have been applied. As such, the rejection is based on hindsight reconstruction, which is improper (MPEP 2143.01, section I, 1st paragraph). The rejection should be reversed for this reason as well.

II. Whether claims 20-23 are unpatentable under 35 U.S.C. 103(a) as being obvious over the alleged AAPA in view of "Official Notice".

Independent Claim 20

Claim 20 recites a system that comprises:

a controller remote from the appliances configured to communicate with the plurality of appliances and being configured to generate a map of the communication paths between the printing devices and the appliances based on signals received from the plurality of appliances;

"A controller to generate a map" is not found

The FOA cites paragraphs [0003] – [0004] as allegedly teaching these elements. However as previously explained, [0003] teaches that "...the mapping is merely a manual process performed by an operator..." and that the "mapping is transmitted to the central controller." (see [0003]). Thus the central controller in [0003] does not generate a map and there is no teaching or suggestion that a controller generates a map. Therefore, the claimed controller configured to

generate a map of the communication paths is not taught or suggested. This is a clear error in the rejection and the rejection should be reversed.

"A map of the communication paths" is not found

Paragraph [0003] states that the map created by the human operator is "based on the addresses of the devices." ([0003] lines 7-8) There is no explicit disclosure as to what the map includes or looks like; only that it is based on addresses. There is no teaching or suggestion that the map is "of the communication paths between the printing devices and the appliances." The examiner has not provided any evidence supported by fact that this element is found. This is a clear error in the rejection and the rejection should be reversed.

A map generated "based on signals received from the plurality of appliances" is not found

The claimed controller generates the map based on signals received from the plurality of appliances. Paragraph [0003] merely discloses that a human operator creates a map based on addresses and sends it to the central controller. Thus the central controller does not generate the map. There is no teaching or suggestion that the central controller generates a map and certainly not "based on signals received from the plurality of appliances." None of the claimed elements are taught or suggested. The rejection is improper for numerous reasons and should be reversed.

Impermissible Official Notice

The FOA takes Official Notice that the claimed element of the controller is configured to perform an automatic appliance failover to a second appliance using the map of the communication paths as recited in the claim is obvious (FOA, page 11, 3rd paragraph). The Background section of the present specification does not

discuss providing automatic failover. Quite the opposite: it states that the conventional process cannot redirect devices when a device fails (specification, page 2 [0007]). Therefore based on the evidence of record, the examiner's position is contrary to the facts. Thus the examiner's position is disputable and is not capable of instant and unquestionable demonstration as being well-known. The Official Notice is impermissible.

Furthermore, the examiner's reasoning of obviousness of "doing so would allow for diagnostic data to be obtained from a different data collection device if a failure occurs..." is taken directly from the language of present claim 20, last paragraph. Since no other reference is applied, this is impermissible hindsight and a clear error. The rejection is improper and should be reversed.

A prima facie obviousness rejection has not been established and the rejection should be reversed. Accordingly, independent claim 20 and dependent claims 21-23 patentably distinguish over the references of record and should now be allowed.

III. Whether claims 2 and 3 are unpatentable under 35 U.S.C. 103(a) as being obvious over the alleged AAPA in view of Basso et al.

This rejection involves dependent claims. Since the independent claims have been shown to not be taught or suggested by the references, then their dependent claims are also not taught or suggested. The alleged AAPA fails to establish a prima facie rejection and thus the rejection is improper. The rejection should be reversed and all claims allowed.

Conclusion

For the reasons set forth above, a prima facie anticipation or obviousness rejection has not been established for any claim. All rejections have been shown to be improper. Appellant respectfully believes that all pending claims patentably and unobviously distinguish over the references of record and that the rejections should be reversed. Appellant respectfully requests that the Board of Appeals overturn the Examiner's rejections and allow all pending claims. An early allowance of all claims is earnestly solicited.

Respectfully submitted,

JUNE 30, 2009
Date

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8. Claims Appendix

1. A method for configuring data communication paths between a central controller and a plurality of printing devices via a plurality of appliances, the method comprising:

ensuring one or more appliances of the plurality of appliances are active

where an appliance is a computer remote from the central controller configured to collect diagnostic data from one or more of the plurality of printing devices and to transmit the diagnostic data to the central controller;

for each of the printing devices, determining communication capabilities with the one or more appliances to determine communication paths between the plurality of printing devices and the one or more appliances;

transmitting signals indicative of the communication capabilities to the central controller; and

mapping respective communication paths between the central controller and the printing devices via the one or more appliances as a function of the communication capabilities to obtain an automatic appliance failover to allow diagnostic data to be collected from a selected printing device by way of multiple appliances.

2. The method for configuring data communication paths as set forth in claim 1, further including:

for each of the printing devices, identifying an optimal path between the appliance and the printing device; and

wherein the mapping includes:

mapping the respective communication paths between the central controller and the printing devices as a function of the optimal paths.

3. The method for configuring data communication paths as set forth in claim 2, wherein the identifying includes at least one of:

determining one of a plurality of paths between a selected appliance and a selected printing device having a least number of hops; and

determining one of a plurality of paths between the selected appliance and the selected printing device achieving a shortest communication time.

4. The method for configuring data communication paths as set forth in claim 1, further including:

for each of the printing devices, determining a second communication capability between a second appliance and the printing device;

transmitting signals indicative of the second communication capabilities to
the central controller; and

wherein the mapping includes:

mapping the respective communication paths between the central
controller and the printing devices via the first and second
appliances as a function of the first and second communication
capabilities.

5. The method for configuring data communication paths as set forth in claim
4, wherein the mapping includes:

substantially balancing respective printing device loads across the
appliances.

6. – 11. (Withdrawn)

12. – 19. (Canceled)

20. A system comprising:

a plurality of printing devices;

a plurality of appliances where an appliance is a computer configured to collect diagnostic data from one or more of the plurality of printing devices;

a communication network configured to provide a plurality of communication paths between components connected to the communication network;

the plurality of printing devices and the plurality of appliances being connected to the communication network where communication paths are provided between one or more of the plurality of printing devices and one or more of the plurality of appliances;

a controller remote from the appliances configured to communicate with the plurality of appliances and being configured to generate a map of the communication paths between the printing devices and the appliances based on signals received from the plurality of appliances;

the controller being configured to receive, from a first appliance from the plurality of appliances, diagnostic data relating to a selected printing device; and

the controller being configured to perform an automatic appliance failover to a second appliance using the map of the communication paths if the first appliance is disabled in order to receive the diagnostic data relating to the selected printing device.

21. The system of claim 20 further including means for automatically mapping the communication paths based on signals received from the plurality of appliances.

22. The system of claim 20 further including means for ensuring each of the appliances is active.

23. The system of claim 20 further including means for identifying addresses of the appliances and addresses of the printing devices with which the appliances are capable of communicating.

9. Evidence Appendix

None. There is no extrinsic evidence.

10. Related Proceedings Appendix

None. There are no related proceedings.